

# In the Court of Appeals of the State of Alaska

Sean Aubrey,

Appellant,

v.

State of Alaska,

Appellee.

)  
) Court of Appeals No. A-12678  
)

## Order

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) Date of Order: April 8, 2019  
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Trial Court Case # 3PA-13-01704CI

The Appellant, Sean Aubrey, litigated a felony merit appeal in this Court. *See Aubrey v. State*, Alaska App. Memorandum Opinion No. 6758 (Jan. 23, 2019). Mr. Aubrey was represented at public expense by an attorney under contract with the Office of Public Advocacy.

After the appeal was decided, the Clerk of the Appellate Courts notified Mr. Aubrey that she intended to enter judgment against him for attorney's fees in the amount of \$1,500. *See* Appellate Rule 209(b)(6). Mr. Aubrey asks this Court to review the Clerk's decision. Mr. Aubrey asserts that he should not have to pay the entire amount of the judgment for attorneys fees because he partially prevailed in his appeal — that is, although this Court affirmed some issues in his appeal, this Court also remanded Mr. Aubrey's case to the superior court for further litigation of his application for post-conviction relief.

Appellate Rule 209(b)(6) requires indigent appellants to reimburse the government some of the cost of the attorneys who represent them at public expense, “unless the defendant's conviction was reversed by the appellate court.” Although Mr.

Aubrey prevailed on some issues in his appeal, this Court did not overturn his conviction. Mr. Aubrey asserts that the rule does not address appellants in his situation, and argues that the intent of the rule is that a prevailing party should not be assessed the costs of counsel. He also asks this Court to apply Appellate Rule 521 and relax the provisions of Rule 209(b)(6).

But Appellate Rule 209(b)(6) clearly contemplates assessing attorney fees when a defendant brings a merit appeal from post-conviction relief proceedings. And there is nothing in Rule 209(b) that suggests the Supreme Court did not intend that defendants who prevailed — in whole or in part — in such an appeal, but whose convictions were not overturned, would not be assessed some of the cost for court-appointed attorneys. Additionally, Mr. Aubrey's situation is not one where enforcement of the Rule 209(b) causes an injustice such that this Court should relax the requirements of that Rule.

Because this Court did not overturn Mr. Aubrey's convictions, Mr. Aubrey is required to reimburse to the government some of the cost of the attorney who represented him at public expense.

The decision of the Clerk is **AFFIRMED**.

Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts

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M. Johnson, Deputy Clerk

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